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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,851	10/29/2003	Terrance N. Durdon	2077-41	6267

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GOWAN INTELLECTUAL PROPERTY  
1075 NORTH SERVICE ROAD WEST  
SUITE 203  
OAKVILLE, ON L6M-2G2  
CANADA

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/694,851

Applicant(s)

DURDON, TERRANCE N.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005 and 02 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 9,11 and 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8,10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 9,11, and 14-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 28, 2005 and February 2, 2006.

### *Drawings*

2. The drawings were received on September 28, 2005. These drawings are not approved as they introduce new matter. Since drinking opening **28** is not described as having an upstanding wall portion on only one side thereof (see the right side of the opening in figure 3), the proposed drawing correction introduces new matter as illustrating opposed ribs lying in the same plane without a corresponding upstanding wall portion surrounding the opening.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the stiffening ribs and the cover portion and rim portion lying "substantially in the same plane" must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

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renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to because the cross hatching of figure 3 depicts a rubber material. See MPEP 608.02. Additionally, in figure 1, the lead line of reference character **12** appears to be pointing to a portion of the lid and not the cup rim as set forth in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 1-4,6,7, and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Melton (US 6,314,866).

The lid illustrated in figure 27 discloses a cover portion having a drinking access port **837** and a condiment opening defined therein, the unnumbered condiment opening being substantially opposite (to the degree set forth in the claims) from the drinking access port; a rim portion **822** around the periphery of the cover portion, and sealingly securable to the upper end of the drinking cup; and a flexible arm integrally formed with the rim portion and extending outwardly therefrom, the flexible arm having a sealing member **850** at an end remote from the rim portion for sealably closing the condiment opening when the condiment opening is not in use. See column 17, line 24 with respect to a tab on the sealing member.

***Claim Rejections - 35 USC § 103***

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Melton in view of Prueher (US 4,350,260).

Melton teaches the claimed cup lid except for the hanging chad defining the drinking access port.

Prueher teaches it is known to provide an opening in a cup lid, the opening formed by dislocating a hanging chad.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a hanging chad to the cup lid of Melton. Doing so is an obvious substitution of equivalent structure known in the art for drinking openings in cup lids.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Melton in view of Kenihan (US 6,708,735).

Melton teaches the claimed cup lid except for the stiffening ribs around the periphery of the condiment opening.

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Kenihan teaches a cup lid having stiffening ribs **24** around the periphery of the condiment opening **20**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of stiffening ribs around the periphery of the condiment opening of Melton. Doing so provides stiffening to the weakened area in the cover portion formed by the opening.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Melton.

Wherein Melton is silent regarding the extrusion grain of the cup lid, it is well known in the art that an extruded lid has an extrusion grain. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the cup lid of Melton with the flexible arm having a longitudinal axis which is substantially aligned with the extrusion grain of the cover, rim portion and flexible arm.

10. Claims 1,3,6,10, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over figure 34 of Melton in view of Figure 27 of Melton.

Figure 34 of Melton teaches the claimed cup lid including the cup lid being flat such that said cover portion and said rim portion lie substantially in the same plane, except for a cover for covering the condiment opening and flexible arm attaching the cover to the cup lid rim.

The cup lid illustrated in figure 27 teaches a cover for the condiment opening and flexible arm attaching the cover to the cup lid rim.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a cover for covering the condiment opening and flexible arm attaching the cover to the cup lid rim to the lid illustrated in figure 34. Doing so would provide a cover for the container opening to prevent spills and heat exchange between the container contents and the atmosphere.

Wherein Melton is silent regarding the extrusion grain of the cup lid, it is well known in the art that an extruded lid has an extrusion grain. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the cup lid of Melton with the flexible arm having a longitudinal axis which is substantially aligned with the extrusion grain of the cover, rim portion and flexible arm.

11. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Kenihan.

Melton as modified teaches the claimed cup lid except for the stiffening ribs around the periphery of the condiment opening.

Kenihan teaches a cup lid having stiffening ribs **24** around the periphery of the condiment opening **20**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of stiffening ribs around the periphery of the condiment opening of Melton. Doing so provides stiffening to the weakened area of the cover portion formed by the opening.

### ***Response to Arguments***

12. Applicant's arguments filed September 28, 2005 have been fully considered but they are not persuasive.

Regarding the drawings, several claimed features are not seen in the figures. The plurality of ribs represented by **34** are not seen in the figures. Only one rib is seen in each of figures 2,3,7, and 8. The drawing correction submitted September 28, 2005 attempt to show a plurality of ribs. However, since the opening is not described as having an upstanding portion on only one side thereof (see the right side of the opening in figure 3), the corrected drawing

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introduces new matter as illustrating opposed ribs lying in the same plane without a corresponding upstanding wall portion surrounding the opening

The stiffening ribs and the cover portion and rim portion lying “substantially in the same plane” in any of the figures including figures 7 and 8. Because figures 7 and 8 are not cross sectional views, there is no way to determine the claimed element lie “substantially in the same plane”. Moreover, since the cover portion **18** is recessed from the rim **20** it is unclear how at least these two elements lie “substantially in the same plane”.

Regarding the remarks on page 8 directed to the obviousness and anticipation rejections, applicant argues the patent to Melton does not teach the condiment opening is “substantially opposed” to the drinking opening. The claims do not provide specific limitations of a condiment opening except that it is substantially opposite the drinking opening. The limitation of “substantially opposed” is not set forth with respect to a specific location of the lid. Thus, the structure of Melton anticipates the claims since a line drawn between the drinking opening and the condiment opening would make them “substantially opposed”.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37



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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.


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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

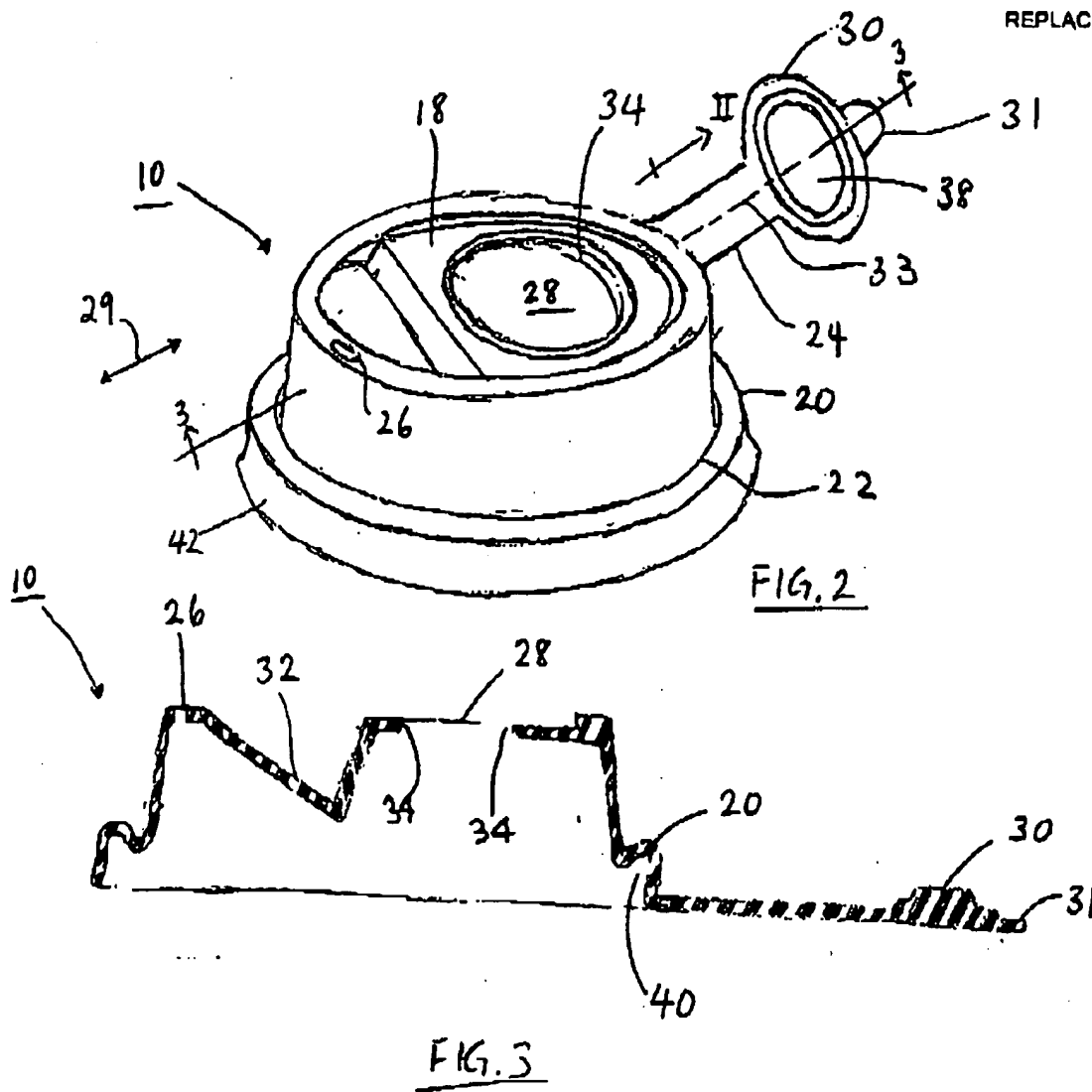
RAH  
April 4, 2006



Robin A. Hyton  
Primary Examiner  
GAU 3727

not approved

REPLACEMENT SHEET



OFFICIAL  
STAMP